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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LINDA PEDRAZA and FRANCISCO  
PEDRAZA, individually and on  
behalf of their son MP,

No C-05-04977 VRW  
ORDER TO SHOW CAUSE

Plaintiff,

v

ALAMEDA UNIFIED SCHOOL DISTRICT  
and THE CALIFORNIA DEPARTMENT OF  
EDUCATION, THE ALAMEDA BOARD OF  
EDUCATION, ALAN NISHINO,  
individually and as  
Superintendent of the Alameda  
Unified School District, ARDELLA  
DAILEY, as superintendent of the  
Alameda Unified School District,  
DAVID WAX, individually and as  
Special Education Director of the  
Alameda Unified School District,  
CALIFORNIA DEPARTMENT OF  
EDUCATION and JACK O'CONNELL, as  
State Superintendent of Public  
Instruction for the State of  
California,

Defendants.

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1           On February 23, 2006, plaintiffs Linda and Francisco  
2 Pedraza, individually and on behalf of their son Michael Pedraza,  
3 filed a first amended complaint ("FAC")(Doc #10) against Alameda  
4 Unified School District ("AUSD") and other defendants for  
5 violations of the Individuals with Disabilities in Education Act  
6 (IDEA), 20 USC §§ 1400, et seq; the Rehabilitation Act of 1973  
7 ("RA"), 20 USC § 794; 42 USC § 1983; and breach of contract. All  
8 of plaintiffs' claims were based on their allegation that AUSD  
9 failed to provide Michael Pedraza the free and appropriate  
10 education (FAPE) to which he was entitled under IDEA during the  
11 2003-2004 school year. On March 27, 2007, the court dismissed  
12 plaintiffs' § 1983 claims and plaintiffs' claims for compensatory  
13 and punitive damages under the IDEA and punitive damages under the  
14 RA. Doc #65 at 22.

15           Two other cases were filed in the Pedrazas' name in 2007.  
16 On September 17, 2007, plaintiffs' counsel Vernon C Goins II  
17 ("Goins") filed a complaint for damages in this court, originally  
18 docketed as No C-07-04781 MEJ. The 07-4781 complaint named the  
19 same plaintiffs and defendants as the FAC and listed the same  
20 causes of action, except the breach of contract cause of action.  
21 The chief difference between the 07-4781 complaint and the FAC is  
22 that the 07-4781 complaint sought redress for the alleged denial of  
23 a FAPE for three additional school years: 2004-2005, 2005-2006 and  
24 2006-2007. Compare Doc #10 at ¶42 with Doc #5 in 07-04781 at ¶137.  
25 Then, on November 14, 2007, Linda Pedraza, on behalf of Michael  
26 Pedraza, filed a petition in the state court appealing a June 19,  
27 2007 decision of the Office of Administrative Hearings (OAH) which  
28 determined, among other things, that AUSD had not denied Michael

1 Pedraza a FAPE for the 2004-2005, 2005-2006 and 2006-2007 school  
2 years. Doc #1 in 07-5989 at Exh A. On November 27, 2007, AUSD and  
3 OAH removed the state court action to this court (Doc #1 in 07-  
4 5989), where it was originally docketed as No C-07-05989 EMC.

5 Because the two new cases were both based on the issue  
6 whether AUSD denied Michael Pedraza a FAPE, the undersigned related  
7 the new cases to this case and then consolidated the cases, closing  
8 the 2007 cases and ordering that all further pleadings and motions  
9 be filed in No C-05-04977. Doc ##92, 97.

10 On December 17, 2007, Goins filed a motion to withdraw as  
11 counsel of record for plaintiffs. Doc #93. On December 26, 2007,  
12 Linda Pedraza filed a motion for issuance of an order to show cause  
13 why Goins should not be sanctioned for alleged misconduct during  
14 his representation of the Pedrazas. Doc #105.

15 In addition, on December 19, 2007 and January 4, 2008,  
16 Linda Pedraza filed separate motions for reconsideration of the  
17 court's orders relating and then consolidating the various cases  
18 filed in Michael Pedraza's name. Doc #100, 110. In these motions,  
19 Linda Pedraza purports to represent her son, Michael Pedraza.

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21 I

22 The first issue before the court is Goins's motion to  
23 withdraw as counsel. The trial court is given broad discretion in  
24 determining whether a motion to withdraw should be granted. See  
25 Whiting v Lacara, 187 F3d 317 (2d Cir 1999). Courts regularly  
26 consult the American Bar Association's Model Rules of Professional  
27 Conduct ("MRPC") as well as state-imposed ethical obligations. See  
28 Whiting, 187 F3d at 321 ("[T]he Model Code provides guidance for

1 the court as to what constitutes 'good cause' to grant leave to  
2 withdraw as counsel.").

3           Here it is evident that Goins and plaintiffs'  
4 relationship has degenerated to the point that it would be  
5 extremely difficult for Goins to carry out further representation  
6 effectively. Both Goins and plaintiffs are in favor of Goins's  
7 withdrawal. The dispute between Goins and plaintiffs dates back at  
8 least as far as May 7, 2007, when Linda Pedraza filed a letter with  
9 the court requesting that Goins be ordered to withdraw for reasons  
10 including his alleged failure to communicate with plaintiffs  
11 regarding the case. Doc #72. The court responded by ordering  
12 plaintiffs and Goins to confer with Magistrate Judge Maria-Elena  
13 James, which they did on June 7, 2007. Doc ##73, 78. These and  
14 other efforts were apparently of no avail, as Linda Pedraza filed a  
15 motion to dismiss counsel on December 11, 2007, citing as an  
16 additional reason to dismiss Goins his filing of the 07-04781  
17 action, allegedly without plaintiffs' knowledge or approval. Doc  
18 #91. For his part, Goins states that continued representation has  
19 been made impossible in part by Linda Pedraza's repeated filing of  
20 documents with the court purporting to represent Michael Pedraza.  
21 Doc #94 at 6.

22           On these facts, the court finds good cause for  
23 withdrawal. See MPRC 1.16(a)(3) ("[A] lawyer shall not represent a  
24 client or, where representation has commenced, shall withdraw from  
25 the representation of a client if \* \* \* the lawyer is discharged.")  
26 See also Paul W Vapnek, California Practice Guide: Professional  
27 Responsibility 10:45-46 (The Rutter Group, 2006) ("A withdrawal  
28 motion may properly be based simply on a personality clash with the

1 client. The breakdown in the attorney-client relationship is  
2 ground for allowing the attorney to withdraw.") (citing Estate of  
3 Falco, 188 Cal App 3d 1004, 1014 (1987)).

4 The situation is complicated, however, by the fact that  
5 Michael Pedraza is a minor. He is represented in this case by his  
6 parents, Francisco and Linda Pedraza, as guardians at litem. Doc  
7 #17. Although non-attorneys may appear pro se on their own behalf,  
8 a non-attorney guardian must be represented by counsel in bringing  
9 an action on behalf of a minor. Johns v County of San Diego, 114  
10 F3d 874, 877 (9th Cir 1997).

11 It has been brought to the court's attention that  
12 Francisco Pedraza is an active member of the State Bar of  
13 California. But it is Linda Pedraza, a non-attorney, who has  
14 repeatedly filed motions purportedly on Michael Pedraza's behalf.  
15 The need for an attorney to represent Michael Pedraza's interests  
16 is underscored by these motions which, though earnest, offer the  
17 court little assistance in sorting through the issues in this case.  
18 Because the case cannot proceed until Michael Pedraza, through his  
19 guardians, is represented by an attorney, Goins's motion to  
20 withdraw must be denied.

21 At a hearing on February 14, 2008, Francisco Pedraza told  
22 the court that although he is admitted to the State Bar of  
23 California, he is not admitted to the bar of this court and is a  
24 transactional lawyer unfamiliar with litigation practice. He  
25 feels, therefore, unable to represent his son effectively in this  
26 matter.

27 The court respects the position of both Mr and Mrs  
28 Pedraza but it also appreciates the awkward position in which Goins

1 finds himself. Johns, however, appears to tie the court's hands  
2 from proceeding in this matter without the appearance of new  
3 counsel for plaintiffs.

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5 II

6 The other issue presently before the court centers around  
7 the various motions filed by Linda Pedraza, purportedly on behalf  
8 of Michael Pedraza. Linda Pedraza has filed a motion for issuance  
9 of an order to show cause why Goins should not be sanctioned for  
10 alleged misconduct during his representation of the Pedrazas (Doc  
11 #105), a motion for reconsideration of the relation of Nos C-07-  
12 04781 MEJ and C-07-05989 EMC to this case (Doc #100) and a motion  
13 for reconsideration of the consolidation of these cases (Doc #110).  
14 Because a non-attorney guardian may not represent a minor child,  
15 these motions - purportedly filed on behalf of Michael Pedraza -  
16 are not properly before the court. The motions filed by Linda  
17 Pedraza must be terminated. Upon appearance of new counsel, that  
18 counsel can determine whether the issues raised by Linda Pedraza's  
19 various filings have any merit and proceed accordingly.

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21 III

22 For reasons discussed above, the motion to withdraw as  
23 counsel of record for plaintiffs (Doc #93) is DENIED without  
24 prejudice. The motion for issuance of an order to show cause (Doc  
25 #105) is TERMINATED and the motions for reconsideration of relation  
26 and consolidation (Doc ##100, 110) are TERMINATED.

27 The court ORDERS that the plaintiffs show cause in  
28 writing on or before April 30, 2008, why this action should not be

1 dismissed without prejudice for absence of counsel. Plaintiffs are  
2 warned that good cause may be shown ONLY by the appearance of  
3 substitute counsel.

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6 IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Vaughn R. Walker', is written over a horizontal line.

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9 VAUGHN R WALKER  
10 United States District Chief Judge  
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